

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
CIVIL ACTION NO. 5:04CV103**

<b>HARRIETTE C. FLOYD,</b>	)
	)
<b>Plaintiff,</b>	)
	)
<b>v.</b>	)
	)
<b>JO ANNE B. BARNHART,</b>	)
<b>Commissioner of</b>	)
<b>Social Security,</b>	)
	)
<b>Defendant.</b>	)

**ORDER**

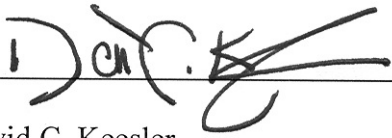
On September 12, 2005, Harriette C. Floyd filed a single “Motion for Attorney’s Fees Pursuant to 42 U.S.C. Section 406(b)” (Document No. 18) under a caption bearing both Civil Case Numbers 5:04CV103 and 5:03CV16. The Response of Defendant Commissioner in this case recommended that no award of attorney’s fees be made in this case, while the Response of the Defendant Commissioner in Civil Case Number 5:03CV16 did not object to the petition for attorney’s fees in Civil Case Number 5:04CV103.

This case was a mandamus action seeking an order requiring the Social Security Administration to take the next step in the process for the claimant. In contrast, Civil Case Number 5:03CV16 was the action seeking appellate review in United States District Court of the action taken by the Social Security Administration. That is the reason Defendant Commissioner did not object to an award of attorney’s fees in Civil Case Number 5:03CV16-H, but did object to an award of attorney’s fees in the instant case.

Section 406(b) specifies that attorney's fees under that section may be awarded up to "25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment . . . ." Because this case was a mandamus action, it resulted in no judgment awarding past-due benefits to claimant. Section 406(b) provides no authority for payment of any attorneys fees in connection with this kind of case. Therefore, no award of attorney's fees under Section 406(b) should be made in this case where no judgment was rendered in this case awarding past-due benefits.

**IT IS, THEREFORE, ORDERED** that the "Motion for Attorney's Fees Pursuant to 42 U.S.C. Section 406(b)" (Document No. 18) with respect to this case, Civil Action No. 5:04-CV-103, is **DENIED**. The Court notes that the Ms. Floyd consented to the entry of this Order.

**Signed: October 19, 2005**

  
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David C. Keesler  
United States Magistrate Judge

